FINAL REPORT

PLANNING ACT REVIEW COMMITTEE

FEBRUARY, 1988

REPORT OF THE
PLANNING ACT REVIEW COMMITTEE

FOREWARD

The recommendations and revisions to the Planning Act outlined in this report are those of the Planning Act Review Committee, a committee established by the Lieutenant Governor in Council to review the current Planning Act. The Committee consisted of George Likely, Chairman; Ron MacNeill, Secretary, John McClellan and Phil Wood.

The report reflects the views of the Committee, developed over a six month period.

The Committee's report was subjected to public scrutiny at seven public meetins held across the province in December, 1987. Nineteen written briefs were submitted to the Committee by municipalities, governmental agencies, interest groups, and individuals. The major changes that resulted from the public review and the Committee's further deliberations are summarized in Appendix A.

INTRODUCTION

Apart from the inclusion of Major Retail Development in 1981, there have been no major revisions to the Planning Act since 1974. At that time, land use planning was still in its infancy in the province, and there was little experience in the procedures and practices involved in it.

In the intervening 13-year period many changes have occurred. Thirty-five municipalities have approved or are working upon Official Plans, and two regional planning boards have been established. Experience has been gained in the application of the Planning Act. As might be expected, numerous flaws in the Act have been revealed. Consequently, the Lieutenant Governor in Council, in June of this year, directed that a Planning Act Review Committee be established to develop a revised Planning Act and to submit it to the public for comment before making a final report. The Committee has now completed its deliberations and submits its report to the Lieutenant Governor in Council for his consideration.

1. Goals

The Committee suggests that the new Planning Act should be developed on the basis of five broad goals:

i) To provide for efficient planning at the Provincial and Municipal level.

The Act should provide structures for effective planning at both provincial and municipal levels. This includes greater cooperation between municipalites and in provincial-municipal issues.

ii) To provide for the orderly and efficient development of public services;

The Province should protect existing investments in services such as roads, water and sewage systems, and other services related to land. Future public investments should be provided within a concept of orderly planning.

iii) To protect the Province's unique environment.

In addition to the provisions of the Environmental Protection Act, a new Act should enable the province and municipalities to ensure that the basic industries of agriculture, forestry, fishing and tourism can continue to function in an efficient manner. As well, the Act should provide means to protect shore frontage, scenic heritage roads, environmentally sensitive areas and other areas of provincial significance.

iv) To provide an effective means of resolving land use conflicts;

Conflicts between various competing interests are inevitable in the development process and the Act should provide mechanisms for resolving such disputes.

v) To provide for public involvement in the planning process;

Planning measures are effective only to the degree that they have broad public support. Those whose land is to be regulated should be afforded an opportunity to be consulted before the use of their land is limited. A new Act must encourage such participation.

RECOMMENDATION

1.1 It is recommended that the five goals be incorporated into the Act.

2. Organization

The 1974 Planning Act and its amendments have served the province well. Most, but not all, of its provisions have been retained in the proposed new Act. It will continue to provide the enabling authority for land use planning at both the provincial and municipal levels of government.

The present Act, though basically sound, poses difficulties in terms of its organization for those attempting to use it. The Committee has reorganized the Act in an attempt to more clearly define the duties of each of the participants in the land use planning process: the Lieutenant Governor in Council, the Minister, the Land Use Commission, municipal councils, municipal planning boards and developers.

While the Act must be expressed in legal terms, the Committee has tried, as far as possible, to reconstitute it in a form that can be better understood by those without a legal background.

The Act outlines the powers and the limits to the powers of those administering the Act. The manner in which these powers are exercised, in terms of precise restrictions on the use of land, are contained not in the Act itself, but in the regulations and municipal bylaws that are authorized by the Act.

RECOMMENDATION

2.1 It is recommended that the Act be better organized for the convenience of all those that work with it. Specific sections should be established for the Land Use Commission, provincial planning, municipal planning, major retail development, appeals and enforcement.

3. Land Use Commission

Under the existing legislation, the Land Use Commission is assigned many functions including that of an appeal body, plan approval authority, policy advisor and program administrator. The Committee believes that the Commission's role should be restricted to the review of "Official Plans"; to appeals, and to any special functions assigned to it by the Lieutenant Governor in Council. As will be subsequently explained, the Committee believes that the development of provincial land use policy and its implementation should rest with the Minister and the Lieutenant Governor in Council In order to ensure continuity in the Commission, and to improve its ability to function as an independent appeal body, the Committee believes that the term of office for commissioners should be extended to three years and that they should be appointed on a rotational basis.

RECOMMENDATION

3.1 It is recommended that the Land Use Commission continue as an appeal body for resolving land use disputes and as the approval authority for municipal "Official Plans".

3.2 It is recommended that the term of offfice for commissioners be changed from two to three years and that they be appointed by way of a rotational formula.

4. Land Identification

The land identification program was established originally to prevent premature subdivision of rural land, at a time when Planning Act Regulations were weak. Since that time, Official Plans have been established in most urbanizing parts of the Province. The Committee believes that questions of premature subdivision and preservation of agricultural land should be addressed directly through the Planning Act Regulations, where policies applicable to all land can be implemented, rather than programs such as land identification, directed on a piece-meal basis to limited groups of purchasers. Land identification programs served a useful purpose at one time; however, the committee believes that the time is now past and that we must move forward to address directly problems of preservation of agricultural land.

RECOMMENDATION

4.1 It is recommended that the Land Identification Prgoram be terminated and that existing agreements be declared null and void.

5. Provincial Planning

The provincial government is responsible for the general administration of the Act as well as the direct regulation of areas which lie outside the jurisdiction of towns and communities with Official Plans and bylaws. The Committee believes that the Province must assume a more positive role in the future, both in areas within its own jurisdiction and in providing guidance to municipalities in the Official Plan process. The Committee is of the view that the Province should:

i) Develop land use policies for the province. Such policies should provide a rationale for the Planning Act Regulations as well as providing general guidelines for municipal development. In the Committee's view, the major weakness in the present planning process is the absence of clearly defined policies with respect to land use development at the provincial level.

ii) Seek public input into the development of provincial land use policies.

iii) Develop provincial guidelines for the use of the Land Use Commission in considering "Official Plans" and their periodic review. In the absence of provincial standards, municipal plans are now approved in a policy vacuum.

In the course of considering the role of provincial planning, it became apparent to the Committee that a great deal of residential development pressure exists along highways, especially in rural areas, because of a lack of building lots in municipalities. Given today's servicing costs, there are few private developers willing to invest in such developments.

Usually, the development cost far exceeds the local market. As a consequence, home builders are forced into unserviced rural areas where the highway is readily available and the cost of land is cheaper.

Regulation in itself will not resolve this situation. If the Province is to encourage development activity within existing built-up areas and reduce the incidence of "strip development", assistance must be provided to make residential lots available within rural municipalities.

RECOMMENDATIONS

5.1 Under a new Planning Act, it is recommended that more resources be directed towards provincial planning. Clear planning objectives should be stablished taking into account the interests of all land use related provincial departments and agencies. It is recommended that the Minister of Community and Cultural Affairs have overall responsibility for co-ordination and for advising the Lieutenant Governor in Council on appropriate policies.

5.2 It is recommended that this review of the Act be followed by a review of the Provincial Planning Act Regulations with a a view to establishing regulations that give effect to clear provincial land use policies. The Committee endorses the need for public input into a review of the Regulations.

5.3 It is recommended that the Province consider a program to assist rural municipalities in the provision of serviced, residential building lots where private development is not taking place.

6. Municipal Planning

The Committee regards municipal planning as a success story under the present Act. Most municipalities in urban and urbanizing areas have now developed Official Plans and bylaws. Other than a consolidation of the powers of councils under one heading, few changes are necessary. These are:

i) The provision of provincial guidelines for Official Plans. In addition to securing compliance with minimum provincial standards, guidelines would ensure that any municipality seeking approval for an Official Plan would have the necessary administrative capacity to implement the Plan.

ii) Procedures for Official Plan amendments and rezoning should be simplified so that a council can amend its Official Plan and accommodate a rezoning change with one public meeting.

iii) An effective method for a Council to implement its Plan and Bylwas should be established. The relationship between Council and its Planning Board must be clear.

RECOMMENDATIONS

6.1 It is recomended that provincial guidelines be established for use by L.U.C. in assessing municipal "Official Plans". It is also recommended that these guidelines take into account the administrative requirements necessary for the implementation of the plan.

6.2 it is recommended that the process for official plan amendments, rezonings and the process for establishing an interim planning policy be simplified.

6.3 It is recommended that enablement be provided for council to appoint a Development Officer to administer bylaws on its behalf.

7. Regional Planning

The Committee has considered at length the issue of regional planning in the province. The current Act provides for the creation of regional planning boards with the power to develop and implement regional plans. Two such boards, the Charlottetown Area Regional Planning Board and the Summerside Regional Planning Board have been in existence for many years. As yet, no regional plans have been adopted, nor are any likely in the near future.

The Committee believes that the fear of a supra-municipal board, unelected, with the power to establish binding plans, has led to a situation in which many municipalities have refused to join, or have withdrawn, from the regional boards. The preent state of affairs is unsatisfactory. The Committee does not believe that there is a need at the present time for a regional body with legislative powers, whether it be a regional planning board or a regional level of government.

Consequently, the Committee is of the view that regional planning boards and their powers should be deleted from the new Act. This does not imply that there are not issues which extend beyond municipal boundaries or are shared by several municipalities. Rather than delegating these issues to a third level of government, the Commitee believes that the Province, within its provincial planning role, should take a much more active part in developing inter-municipal cooperation and in devising solutions to regional problems.

The elimination of regional planning boards does not preclude municipalities drawing together to discuss joint problems and issues. It does, however, allay the fear that such a structure will assume municipal powers and be regarded as a threat to the autonomy of existing municipalities. In effect, the Committee is saying that regional planning boards, as constituted under the present Act, have not been able to develop the functions assigned to them.

The best approach, we suggest, is to revert to a situation in which, with stronger provincial input, municipalities are encouraged to cooperate on matters of common concern. At a future date, a more formal structure may be needed, and the Act can be amended accordingly at that time.

In response to representations made by many municipalities the Committee believes that some forum should be available for municipalities to discuss issues of mutual concern and to exchange information. Consequently, the Committee has added a section enabling the Minister to establish such a forum where desired.

RECOMMENDATION

7.1 It is recommended that regional planning be absorbed as a function of a revitalized provincial planning effort. It is further recommended that inter-municipal matters be addressed on an issue-by-issue basis, in consultation with the municipalities affected.

7.2 It is recommended that the Minister may establish organizations or consultation groups to address regional concerns.

8. Major Retail Development

Part III of the current Act, Major Retail Development, has been a continuing source of controversy since its inception. No part of the Planning Act has been so hotly debated.

The Committee has determined that this part of the Act should be repealed. Its reasons are:

i) The current process is both unwieldy and very costly. Its effectiveness has been questioned since its inception.

8. **Major Retail Development**

ii) The intent of the legislation has never been clear. Some have seen it as a device to regulate the use of land; more have seen it as a decree to regulate the marketplace.

iii) The majority of the public comments heard by the Committee strongly advocated the abolition of the legislation.

iv) The legislation has now been in place for almost a decade, a time sufficient for most local business to adjust to changing conditions.

v) Legitimate concerns about the public costs of new developments, the provision of new roads, interchanges water and sewage systems can be addressed adequately through the use of development agreements where appropriate.

vi) In the Committee's view, it is more appropriate to address concerns about the potential impact of new retail space in the province through positive development programs to assist existing businesses, rather than through restrictive legislation.

In view of the current situation, where two applications for major retail development are now in process, the Committee believes that the present legislation should be retained until January 1, 1991, for the following reasons:

i) in fairness to those who are already midway through the process, the legislation should be retained until their applications have received final disposition.

ii) the Committee is aware of the recommendations contained in the impact study commissioned for the CHD application.

RECOMENDATION

8.1 It is recommended that Part III of the Planning Act be repealed, to be effective January 1, 1991.

9. Notice of Major Development

In 1986, an amendment was made to the existing Act requiring that permits granted for major commercial, industrial, or extensive livestock developments be advertised in order for affected individuals to exercise their appeal rights. The Committee believes that this provision is warranted and that the requirements should be extended to include all subdivisions in excess of 5 lots and all institutional uses. In order to make the public notice of these developments meaningful, the Committee is of the opinion that the appeal period should be reduced to 21 days but that the appeal period should not commence for these types of developments until the date of the public notice. In fairness to developers, the onus will be on provincial and municipal officials to ensure that the required notice is made as soon as possible after issue of the permit.

The Committee also believes that in the case of developments of more than 2000 square meters, the Minister should be able to require development agreements with developers to provide for the payment of public expenses incurred as a result of the development.

RECOMMENDATION

9.1 It is recommended that the existing requirement for public notification of commercial, industrial, and intensive livestock developments be extended to include major residential subdivisions and institutional uses.

9.2 It is recommended that the length of the appeal period be reduced from 30 to 21 days, but that it not commence until publication in a newspaper circulating within the area.

9.3 It is recommended that the Minister be enabled to enter into a development agreement for any development which is in excess of 2000 square metres.

10. Environmental Issues

The current Planning Act provides authority for the Province to regulate the use of excavation pits and quarries. The Committee believes that this is fundamentally an environmental issue rather than a planning issue and that enablement to regulate in this area should have its basis in the Environmental Protection Act.

Similarly, the Committee is of the view that the Greater Charlottetown Environmental District Act could also be accommodated under this Act. As a review of this legislation is currently underway, it is timely that consideration be given to the consolidation of all environmental related matters under a single statute.

RECOMMENDATION

10.1 It is recommended that the regulations for excavation pits and the objectives of the Greater Charlottetown Environmental District be absorbed under the proposed new Environmental Protection Act.

APPENDIX A

Major policy changes resulting from public consultation and Committee reconsideration:

1. Clarification of definitions, including the addition of new definitions.

2. Clarification that "municipality" does not include the City of Charlottetown, or the Town of Summerside.

3. Insertion of the goals of the Act into the Act, to clarify the intent of the Act.

4. Provision to allow the Minister to establish organizations or consultation groups for the examination of inter municipal issues.

5. Redrafting of sections on Interim Planning Policies to clarify its intent.

6. Provision that Planning Boards can act only in an advisory capacity, but that a municipality can designate a Development Officer to administer its bylaws.

7. Reduction of appeal period from 30 to 21 days.

8. Repeal of Part lll, Major Retail Development, effective on January 1, 1991.

9. Provision of development agreements for major developments in excess of 2000 square metres.

10. Changes of many words and phrases to clarify the intent of many sections.

PARC BRIEFS

1. Community of Wilmot
2. City of Charlottetown
3. Community of West Royalty
4. Community of North River
5. Frank Johnston Mgt. Inc.
6. Charlottetown Area Development Corp.
7. Community of Cornwall
8. Design and Construction Industry Council
9. Land Use Commission
10. Environmental Advisory Council
11. Community of Southport
12. Association of Professional Engineers
13. Department of Agriculture
14. Town of Parkdale
15. Downtown Busness Association
16. Charlottetown Area Planning Board
17. Miltonvale Park
18. Atlantic Planners Institute (PEI Branch)

Planning Act

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

INTERPRETATION

Definitions

1. In this Act

Commission — (a) "Commission" means the Land Use Commission referred to in section 3;

council — (b) "council" means the council of a municipality;

developer — (c) "developer" means the owner of lands on which development is proposed;

development — (d) "development" means the carrying out of any building, engineering, excavation or other operations in, on, over or under land, or the making of any material change in the use or the intensity of the use of any land, buildings or premises and includes the placement on land of a mobile home or any other prebuilt structure;

development agreement — (e) "development agreement" means an agreement between a developer and a council, or between a developer and the Minister, or a tripartite agreement between a developer, a council and the Minister, respecting the terms and conditions under which a development may be carried out;

Minister — (f) "Minister" means the Minister of Community and Cultural Affairs;

municipality — (g) "municipality" has the same meaning as in the Municipalities Act R.S.P.E.I. 1974, Cap. M-15.1 but does not include the City of Charlottetown and the Town of Summerside;

official plan — (h) "official plan" means a plan for a municipality adopted under Part III;

planning board — (i) "planning board" means a planning board or joint planning board appointed under Part III;

resident — (j) "resident" in relation to a municipality, means a person who has attained the age of eighteen years and is ordinarily resident within the boundaries of the municipality;

subdivision — (k) "subdivision" means a division of a parcel of land by means of a plan of subdivision, plan of survey, agreement, deed or any instrument, including a caveat, transferring or creating an estate or interest in part of the parcel;

subdivision agreement

(1) "subdivision agreement" means an agreement between a council and a developer whereby the developer undertakes to provide basic services in order to develop a plan of subdivision.

OBJECTS

Objects

2. The objects of this Act are

(a) to provide for efficient planning at the provincial and municipal level;

(b) to encourage the orderly and efficient development of public services;

(c) to protect the unique environment of the province;

(d) to provide effective means for resolving conflicts respecting land use;

(e) to provide the opportunity for public participation in the planning process.

PART I
LAND USE COMMISSION

Commission, body corporate

3. (1) The Land Use Commission established by An Act to Establish the Land Use Commission, 23 Eliz. II (1974), c. 22 is continued as a body corporate.

Composition

(2) The Commission shall consist of seven members appointed by the Lieutenant Governor in Council none of whom shall be a civil servant or a member of the Legislative Assembly.

Term of office

(3) The members of the Commission shall hold office for a period of three years and are eligible for reappointment.

Quorum

(4) The quorum at a meeting of the Commission is four members.

Chairman

(5) The Lieutenant Governor in Council shall appoint one of the members as chairman.

Absence of chairman

(6) In the absence of the chairman at a meeting of the Commission, the members present shall elect one of their number to act as chairman of the meeting.

Determination of issues

(7) All issues and matters coming before the Commission shall be settled or determined by a majority vote of the members of the Commission present and voting, and the chairman shall vote only for the purpose of breaking a tie.

Remuneration of chairman and members

(8) The chairman and members of the Commission shall receive such remuneration and such reimbursement for expenses as may be fixed by the Lieutenant Governor in Council.

Transitional

(9) For the purposes of subsection (3), when the Commission is first constituted after this Act comes into force

(a) two members shall be appointed for a period of one year;

(b) two members shall be appointed for a period of two years;

(c) three members shall be appointed for a period of three years.

Officers and employees

4. (1) The Commission may, pursuant to the Civil Service Act R.S.P.E.I. 1974, Cap. C-9.1, employ an executive director, a secretary, and, with the concurrence of the Minister, such other officers as may be necessary to enable the Commission to carry out its functions.

Technical assistance

(2) The Commission may call upon any department established under the Public Departments Act R.S.P.E.I. 1974, Cap. P-28 and any Crown corporation or agency to provide assistance in carrying out its functions, and where called upon, the department, Crown corporation or Crown agency shall provide the assistance.

Functions

5. The Commission shall

(a) hear appeals under Part V and deliver decisions in accordance with the applicable statutory provisions and the rules of natural justice;

(b) establish procedures and guidelines governing appeals and the conduct of its business;

(c) carry out such other functions as are conferred by any enactment or as the Lieutenant Governor in Council may require;

(d) approve official plans under Part III if satisfied that the plans meet the minimum requirements established by the Lieutenant Governor in Council pursuant to section 7;

(e) make an annual report of its activities to the Lieutenant Governor in Council on or before March 31 in each year.

PART II
PROVINCIAL PLANNING

Role of Minister

6. The Minister shall

(a) advise the Lieutenant Governor in Council on provincial land use and development policy;

(b) perform the functions conferred on him by this Act and the regulations;

(c) generally, administer and enforce this Act and the regulations,

and may

(d) provide planning advisory services;

(e) promote co-operation between municipalities with respect to inter-municipal or regional planning issues;

(f) promote public participation in the development of policies;

(g) establish organizations and groups which he may consult respecting the exercise of his functions.

Role of Cabinet

7. The Lieutenant Governor in Council may

(a) adopt provincial land use development policies;

(b) establish minumum requirements applicable to official plans.

Provincial planning regulations

8. (1) The Lieutenant Governor in Council may make provincial planning regulations applicable to any area except a municipality with an official plan and bylaws, the City of Charlottetown and the Town of Summerside

general

(a) with respect to planning and land use matters affecting the general welfare, health, safety and convenience of persons in any area or municipality;

areas

(b) with respect to the definition of areas to be regulated;

zoning

(c) with respect to land use zones, and in particular

(i) establishing and prescribing the geographical boundaries of zones,

(ii) prescribing permitted uses of land and structures within zones, and

(iii) establishing and regulating areas as conservation zones for the purpose of preserving therein objects of beauty, fossil remains, other objects, animate and inanimate, of aesthetic, educational or scientific interest, or for the purpose of preserving any unusual combination of elements of the natural environment having educational, historic or scientific interest,

(iv) establishing and regulating areas as environmentally sensitive areas;

subdivision

(d) with respect to the subdivision of land and in particular

(i) governing, restricting and prohibiting subdivision of land,

(ii) setting out procedures for subdivision application,

(iii) empowering and governing subdivision agreements between the Minister and subdividers and between vendors and purchasers,

(iv) requiring a subdivider to convey to the Crown or a non-profit corporation, for open space, recreation, park or other public use, for the benefit and enjoyment of landowners and residents in the neighbourhood, up to 10 per cent of the land being subdivided or to apply the equivalent value thereof to be held in a fund for those purposes;

development and services

(e) with respect to the development of land and the provision of services and in particular

(i) governing the servicing of land with streets, sidewalks, and piped services,

(ii) establishing standards and timetables for the servicing of land,

(iii) establishing cost-sharing schedules for development and maintenance between the developer and the Crown or between vendors and purchasers,

(iv) authorizing the Minister to negotiate development agreements with a developer;

building standards

(f) with respect to building standards and in particular

(i) adopting all or part of the National Building Code,

(ii) establishing standards for the prevention and suppression of fires,

(iii) establishing and prescribing architectural control standards;

permits

(g) with respect to the use of permits and in particular

(i) requiring the use of permits for subdivision and development,

(ii) setting the terms and conditions under which permits may be issued, refused, suspended, reinstated and revoked,

(iii) providing penalties for failure to obtain permits,

(iv) providing methods, sanctions and procedures for ensuring compliance with the terms and conditions of permits,

(v) empowering and governing development agreements between the Minister and a developer,

(vi) prescribing fees for permits,

(vii) providing for and authorizing the lawful inspection and entry therein of properties that are the subject of permits;

environment protection

(h) with respect to environmental protection and in particular

(i) establishing as a precondition to issue of a permit that the provisions of the Environmental Protection Act R.S.P.E.I. 1974, Cap. E-8.1 and the regulations thereunder be complied with,

(ii) that failure to comply be grounds for refusal or revocation of permits;

scenic heritage roads

(i) with respect to the designation and regulation of certain public roads as scenic heritage roads for the purpose of preserving and enhancing their aesthetic and environmental qualities;

access to highways

(j) with respect to access to streets and highways and in particular, subject to the provisions of the Roads Act R.S.P.E.I. 1974, Cap. R-15,

(i) regulating access roads and lanes and driveways having access to a street or highway in accordance with the laws of the province,

(ii) requiring a permit before the construction of such roads, lanes and driveways,

(iii) imposing limitations or conditions on a permit;

mobile homes

(k) with respect to mobile homes, mobile home courts, travel trailers used as a residence and travel trailer courts and in particular

(i) prescribing terms and conditions respecting their use, location, maintenance, design and construction,

(ii) requiring permits therefor;

special planning areas

(l) with respect to special planning areas and in particular

(i) establishing and regulating areas as special planning areas,

(ii) defining the objectives, purpose and function of the special planning areas,

(iii) prescribing their geographical boundaries;

parking areas

(m) with respect to vehicular parking and in particular

(i) regulating the allocation of space for parking and loading areas in each lot of a subdivision,

(ii) requiring the setting aside of land in a subdivision, building or development site for vehicular parking and loading including space for public transportation services;

summer cottages

(n) with respect to summer cottages and in particular

(i) prescribing terms and conditions respecting their use, location, maintenance, design and construction,

(ii) prescribing terms and conditions respecting the subdivision and development of land for summer cottage purposes,

(iii) requiring permits for summer cottage construction and the subdivision of land for summer cottage use;

fees

(o) prescribing fees in respect of an application for a subdivision approval, development permit or building permit;

enforcement

(p) with respect to the enforcement of this Act, regulations and bylaws and in particular

(i) empowering the Minister to take such remedial or other action as may be necessary to ensure compliance with this Act and the regulations, including the taking of an action required to be taken by a permittee or any other person,

(ii) empowering the Minister to incur such costs as are necessary in taking such remedial or other action and to charge them to the permittee or other person.

Restrictions on zoning for public purposes

(2) No zone shall be established pursuant to clause (1)(c) in which the land therein is used or intended to be used exclusively for public purposes unless all the land in the zone is owned by the Crown, a municipality or a public authority or is intended to be acquired by the Crown, a municipality or a public authority within six months after the date of establishment of the zone and, in the case of a zone established by a municipality on land owned by the Crown or a public authority, the written approval of the Crown or public authority is first obtained.

Subdivision agreement, effects of covenants

(3) Where pursuant to this Act or any regulation made under subsection (1) an agreement respecting a subdivision of land is made by and between a developer and the Minister which provides for the incorporation of a company to hold and manage an area of land or facilities for the common benefit of the owners from time to time of land within the subdivision affected by the agreement, any covenants made pursuant to that agreement between the developer and the owners of land within the subdivision and expressed to run with the land shall run with the land and be binding upon any subsequent owner thereof notwithstanding that such covenant is positive in nature.

Registration in registry office

(4) Subsection (3) is of no effect unless and until the agreement referred to therein between the Minister and the developer and the covenants between the developer and the owners are registered in the office of the Registrar of Deeds for the county in which the land is situated.

Prohibitions

(5) For the avoidance of doubt it is declared that the power to make regulations with respect to any activity or development pursuant to subsection (1) includes power to prohibit that activity or development.

PART III
MUNICIPAL PLANNING

Responsibility of council

9. (1) The council of a municipality which has an official plan adopted under this Act or a previous Planning Act is responsible for land use policy within the boundaries of the municipality.

Planning board

(2) The council of a municipality may appoint a planning board to prepare an official plan.

Duties and powers of planning board

(3) The planning board has the following powers and duties:

(a) to investigate and survey the physical, social and economic conditions in relation to the development of the municipality;

(b) to recommend to the council, for its adoption, an interim planning policy;

(c) to prepare and recommend to council for its adoption a proposed official plan;

(d) to prepare and recommend to the council proposed alterations and additions to the official plan;

(e) to recommend to the council bylaws in respect of the official plan;

(f) to hold public meetings;

(g) when requested by the council so to do, to prepare estimates of the cost of any public work, improvement, or other project; and

(h) to perform such other duties of a planning nature as may be requested by the council.

Constitution

(4) A planning board shall consist of

(a) a chairman who shall be a member of the council; and

(b) not less than two other members who may be members of the council.

Term of office

(5) Members of a planning board hold office until their successors are appointed.

Notice to Minister

(6) The council shall notify the Minister of the establishment of a planning board, give the names of the members thereof and notify the Minister of any changes in the membership of the board.

Remuneration

(7) The members of a board shall receive such remuneration and expenses as the council may determine.

Powers

(8) For the purpose of assisting a planning board to prepare an official plan, a council may

(a) employ staff;

(b) engage consultants;

(c) incur expenditures;

(d) study, investigate and survey physical, social and economic matters relevant to the preparation, amendment or implementation of an official plan.

INTERIM PLANNING POLICY

Interim planning policy

10. (1) A planning board may recommend to the council the adoption of an interim planning policy containing limitations, restrictions and prohibitions on land use pending the completion of an official plan.

Moratorium until policy in effect

(2) The council may refuse to hear applications for subdivision approval, a development permit or building permit from the date of its receipt of the proposed interim planning policy, until the policy comes into effect in accordance with subsection (5).

Notice

(3) The council shall, before adopting an interim planning policy hold at least one public meeting, notice of which is published on at least two occasions in a newspaper circulating in the area, not less than seven days before the meeting, in order to give an opportunity to residents and other interested persons to make representation.

Minutes of meeting

(4) The council shall maintain a record of the proceedings at the public meeting and, in particular, of the objections and representations made by the residents and other interested persons.

Bylaws

(5) Within sixty days after the public meeting the council may, with the approval of the Minister, make bylaws to give effect to the interim planning policy.

Duration

(6) The bylaws shall remain in effect for a period of six months but may be extended for a further period not exceeding six months.

Application

(7) Bylaws giving effect to an interim planning policy do not apply in respect of any development for which application is made prior to the date of the receipt by the council of the proposed interim planning policy from the planning board.

OFFICIAL PLAN

Opportunity for public input

11. (1) Before recommending to the council the adoption of an official plan or any review of an official plan, the planning board shall give an opportunity to residents and other interested persons to make representations.

Public meeting

(2) The board shall hold at least one public meeting, notice of which is published on at least two occasions in a newspaper circulating in the area indicating

(a) in general terms, the content of the official plan or review of the official plan and the proposed implementing bylaws;

(b) the date, place and time of the meeting, which shall be held not less than seven clear days after the date of publication of the notice;

(c) the location at which copies of the proposed official plan or review of the official plan or proposed bylaws may be inspected during office hours; and

(d) that residents and other interested persons are invited to attend and make representations concerning the plan or review.

Minutes of meeting

(3) The planning board shall maintain a record of the proceedings at the public meeting and, in particular, of the objections and representations made by residents and other interested persons.

Official plan

12. An official plan shall include

(a) a statement of economic, physical, social and environmental objectives;

(b) a statement of policies for future land use, management and development, expressed with reference to a specified period not exceeding fifteen years;

(c) proposals for its implementation, administration and the periodic review of the extent to which the objectives are achieved.

Approval by planning board

13. The planning board shall recommend to the council the adoption of an official plan if approved by a vote of the majority of the members of the board present and voting at a meeting thereof.

Adoption of plan

14. (1) The council may adopt an official plan by resolution.

Procedure

(2) Following the adoption of the official plan by the council, the plan

(a) shall continue to be available for public inspection at the office of the municipality;

(b) shall be submitted to the Commission for approval accompanied by a copy of the notice given under subsection 11(2) and a copy of the minutes of the public meeting.

Procedure following Commission approval

15. (1) Following the approval of an official plan by the Commission

(a) the plan becomes the official plan for the area;

(b) notice of approval by the Commission shall be published in the Gazette;

(c) the Commission shall register a copy of the official plan, certified by the chairman as a true copy, in the office of the Registrar of Deeds for the county to which the plan relates; and

(d) the council shall, as soon as is practicable, cause bylaws to be prepared to implement the official plan.

Bylaws, conformity with plan

(2) The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails.

MUNICIPAL PLANNING BYLAWS

Municipal planning bylaws

16. A council may make bylaws implementing an official plan for the municipality.

Approval of Minister

17. The bylaws shall be subject to the approval of the Minister and shall be effective on the date of approval by the Minister.

Notice of meeting

18. (1) Before making any bylaw the council shall

(a) give an opportunity to residents and other interested persons to make representations; and

(b) publish a notice in a newspaper circulating in the area indicating in general terms the nature of the proposed bylaw and the date, time and place of the council meeting at which it will be considered.

Bylaw amendment requiring official plan amendment

(2) Where a bylaw amendment requires an amendment to the official plan pursuant to subsection 15(2), the council may consider the official plan amendment concurrently with the bylaw and shall

(a) indicate in general terms, in the notice published under clause (1)(b), the nature of the proposed plan amendment; and

(b) give the planning board an opportunity to comment on the plan amendment prior to adoption of the amendment.

Procedure

19. A bylaw shall be made in accordance with the following procedure:

(a) it is read and formally approved by a majority of councillors on two occasions at meetings of the council held on different days;

(b) after it is read a second time, it is formally adopted by resolution of the council;

(c) it is signed by the mayor or chairman, the administrator and the Minister and formally declared to be passed, and sealed with the corporate seal of the municipality;

(d) the minutes of the meeting record the name of the bylaw and the fact that it is passed; and

(e) a copy of the bylaw bearing the signature of the mayor or chairman, the administrator and the Minister is entered into the register of bylaws retained by the administrator.

Bylaws

20. (1) The powers of a council to make bylaws includes the power to make bylaws applicable within the municipality with respect to all of the matters set out in clauses 8(a) to (o) except clauses (i) and (l) as if

(a) references to the Crown were references to the municipality;

(b) references to the Minister were references to the council.

Development officer

(2) A council may appoint a development officer to administer the bylaws for the council.

RETURNS

Statistical return

21. The council of a municipality shall forward to the Minister an annual statistical return showing all subdivision plans approved and building permits issued in the municipality.

JOINT PLANNING BOARD

Joint planning boards

22. (1) Where two or more councils wish to establish a joint planning board, they may do so by passing a joint resolution to that effect setting out the representation and functions of the joint planning board.

Application

(2) The provisions of this Part apply, with the necessary changes, to a joint planning board as if it were a planning board for the relevant area.

PART IV
ENFORCEMENT

Definition

23. In this Part "appropriate authority" means the Minister or a council, as the case may be.

Enforcement

24. (1) Any bylaw or regulation made pursuant to the powers conferred by this Act may be enforced and the breach thereof may be restrained by application at the instance of the appropriate authority to the Supreme Court.

Remedies

(2) In any proceeding commenced under subsection (1), the Supreme Court or a judge thereof may grant one or more of the following:

(a) a declaration that an act engaged in or about to be engaged in by a person is or will be a breach of any bylaw or regulation or provision of this Act;

(b) an injunction restraining any person from breaching or continuing to breach any such bylaw, regulation or provision;

(c) an order directing any person to comply with the requirements of any such bylaw, regulation or provision and directing that compliance be carried out under the supervision of a named person;

(d) such other order as the court or judge may determine.

Absence of approval

(3) Where any subdivision of land or a lot within a subdivision requires the approval of the appropriate authority, no person shall convey a lot without first obtaining approval and no building or development permit shall be issued by the appropriate authority prior to approval of the subdivision of land or the lot within the subdivision.

Evidentiary provisions

25. In any prosecution for an offence under this Act

(a) prima facie proof that a permit or license under this Act or the regulations has or has not been issued may be made by a certificate purporting to be signed by the executive director of the Commission or by an officer of the Department of Community and Cultural Affairs and, where the name in the certificate is the same as the name of the person charged with the offence, it shall be prima facie proof that he is the person named in the certificate;

(b) prima facie proof of the boundaries of any municipality may be made by a certificate purporting to be signed by the administrator setting out the legal description of the boundaries;

(c) proof that a municipality is or is not incorporated may be made by a certificate purporting to be signed by the administrator specifying in the case of incorporation the date of incorporation.

Offence and penalty

26. (1) Every person who contravenes any provision of this Act or any bylaw or regulation made under this Act is guilty of an offence and liable on summary conviction

(a) on a first conviction, to a fine not exceeding $1000;

(b) on a subsequent conviction, to a fine of not more than $200 for each day upon which the contravention has continued after the day on which he was first convicted.

Limitation period

(2) Any prosecution for an offence under subsection (1) may be instituted within one year after the time when the contravention occurred.

Production of permit

27. (1) Where any building or structure is being constructed or other activity performed for which a permit is required under any bylaw or regulation made pursuant to this Act, a person authorized by the Minister or the council may require the person constructing the building or structure or performing the activity to show to him the permit therefor and on failure to do so within one day thereafter, that person is guilty of an offence.

Power of entry

(2) For the purposes of subsection (1), a person authorized by the Minister or the council may enter upon any lands upon which the building or structure is being constructed or the activity performed.

PART V
APPEALS

Right of appeal to Commission

28. (1) Subject to subsection (2), any person who is dissatisfied by a decision of a council or the Minister in respect of the administration of regulations or bylaws made pursuant to the powers conferred by this Act, may, within twenty-one days, appeal to the Commission.

Procedure

(2) Subject to adherence to the rules of natural justice, the Commission shall determine its own procedure.

Order

(3) The Commission shall hear and decide appeals and shall issue an order giving effect to its disposition.

Reasons

(4) The Commission shall give reasons for its decision.

Decision binding

(5) The decision of the Commission is final and binding on all parties to the appeal and no appeal lies therefrom.

Enforcement

(6) The council or the Minister, as the case may be, shall enforce an order made by the Commission.

PART VI
MAJOR DEVELOPMENT

Major development

29. (1) In this section "major development" means

(a) any new, or the expansion of any existing development for

(i) commercial,

(ii) industrial,

(iii) institutional, or

(iv) intensive livestock,

use, for which a permit is required; or

(b) any subdivision of land in excess of five lots for residential or cottage use for which approval is required.

Notice

(2) Where a permit is issued or subdivision approval given in respect of any major development, the authority issuing the permit shall cause notice thereof to be given in a daily newspaper circulating in the area in which the development is located.

Appeal period

(3) The appeal period referred to in subsection 28(1) begins to run on the date of publication of the notice under subsection (2).

Submission of application in respect of major commercial or industrial development

(4) Where a major development involves the provision of new or additional space in excess of 2000 square metres in any building for commercial or industrial use, in any municipality with an official plan, the council shall submit the application to the Minister to determine if public improvements are required and a development agreement is necessary.

Major retail development

(5) This Part does not apply to a major retail development governed by Part VII

PART VII
MAJOR RETAIL DEVELOPMENT

Definitions

30. In this Part

application

(a) "application" means an application for a building permit;

building permit

(b) "building permit" means a permit issued under the regulations or under the bylaws of a municipality authorizing the construction or alteration of a building;

council

(c) "council" means the council of a municipality or other authority authorized by law to issue building permits within a municipality and, where the Minister is the authorized authority, means the Minister;

developer

(d) "developer" means a person who applies for a building permit in respect of a major retail development;

existing

(e) "existing" means existing on the date on which an application is made;

impact statement

(f) "impact statement" means a statement which

(i) specifies in detail the expected effect of a proposed major retail development on every community shopping district within the forecast market areas,

(ii) projects the effects on business within existing shopping areas in terms of retail space vacancies and retail sales volumes,

(iii) considers a range of alternative projections for population growth and changes in the real disposable income of consumers,

(iv) offers realistic predictions about the likelihood of the alternatives mentioned in subclause (iii), and

(v) addresses any other issues specifically requested by the council;

major retail development

(g) "major retail development" means a development or redevelopment involving the provision of new or additional retail space in excess of 2000 square metres, exclusive of existing retail space;

municipality

(h) "municipality" has the same meaning as in the Municipalities Act and includes the Town of Summerside and the City of Charlottetown;

redevelopment

(i) "redevelopment" means the removal of buildings from land and the construction or erection of other buildings thereon in replacement thereof;

regulations

(j) "regulations" means regulations made under this Act;

retail space

(k) "retail space" means the gross leasable floor area in any building or group of buildings used or intended to be used for the storage, display and sale of goods by retail or the provision of services, excluding areas used or intended to be used

(i) for the operation of hotels, motels, theatres and recreation facilities, or

(ii) as open areas, entrance ways, public washrooms or for the provision of other common facilities,

except that in relation to a building used or intended to be used primarily for office accommodation or the provision of financial services "retail space" means the gross leasable floor area used or intended to be used for the storage, display and sale of goods by retail.

Major retail development only within municipality

31. No building permit shall be issued for any major retail development except where the proposed development is located within the boundaries of a municipality.

Application for building permit

32. (1) An application in respect of a major retail development within a municipality shall be made to the council and shall be accompanied by three copies of a site plan.

Agreement with developer to cover costs

(2) On receipt of the application, the council shall enter into an agreement with the developer under which the developer agrees to pay for, and provides security satisfactory to the council for the payment of, the costs of preparation of an impact statement and of advertising and conducting the public meeting referred to in section 34.

Failure to enter agreement

(3) If the developer declines to enter into the agreement referred to in subsection (2), the council may deny a building permit for the proposed development.

Consultant to prepare impact statement

(4) After an agreement has been made with the developer under subsection (2), the council shall engage a consultant to prepare an impact statement respecting the proposed development.

Delegation to joint planning board

(5) Where the proposed development is located within a municipality in respect of which a joint planning board has jurisdiction, the council may delegate its authority under subsection (4) to the joint planning board and authorize the joint planning board to assess the impact statement and make recommendations thereon to the council.

Notice

33. Upon receipt of the impact statement, the council shall publish in the Gazette and on at least two occasions in a newspaper circulating in the municipality, a notice indicating

(a) that an application has been made and the name and address of the developer;

(b) the nature of the proposed development and its location;

(c) that a public meeting will be held on a date, time and place specified in the notice being not less than two weeks from the date of the notice;

(d) that interested persons are invited to make representations respecting the proposed development at the public meeting;

(e) that copies of the impact statement and site plan are available for public inspection at a place specified in the notice.

Public meeting

34. (1) The mayor or chairman of the council shall conduct the public meeting and determine the procedure thereat.

Designation of person to conduct meeting

(2) Where the authority authorized by law to issue building permits within a municipality is the Minister, the Minister may designate a person to act on his behalf and that person shall have the powers conferred by subsection (1).

Procedure at meeting

(3) The person conducting the public meeting shall

(a) require the developer or his representative to present his development proposal;

(b) give full opportunity for the expression of public opinion including opportunity to address questions to the developer;

(c) ensure that a full and accurate record is maintained for the proceedings at the meeting.

Developer must present his proposal

(4) If the developer or his representative declines to present his development proposal at the public meeting, the council may deny a building permit for the development.

Factors to be considered

35. Following a public meeting under section 34, the council shall consider whether the proposed development will have a positive or negative impact in the community, region or province, taking into account the impact statement, site plan and the record of the public meeting and shall decide to approve or deny the application in principle.

Approval in principle

36. (1) Where the council approves the application in principle, it shall determine the terms of a development agreement.

Development agreement

(2) No building permit shall be issued in respect of a major retail development unless the developer enters into a development agreement with the council under which the developer undertakes

(a) to use the gross leasable floor space specified in the agreement in accordance with the site plan;

(b) to carry out the work specified in the agreement;

(c) to bear the costs of public improvements incidental to the development as set out in the agreement and to provide security satisfactory to the council in respect of those costs.

Submission of draft agreement for approval of Minister

37. (1) Where a draft development agreement has been agreed with the developer, the council shall submit the draft agreement and all pertinent documentation to the Minister for approval.

Approval

(2) The Minister shall, if he approves the development proposal, signify his approval in writing to the council.

Issue of building permit

(3) Only after receipt of the approval of the Minister shall the council

(a) enter into the development agreement;

(b) issue a building permit in respect of the major retail development.

Where Minister is authorized authority

(4) Where the Minister is the authority authorized by law to issue building permits within the municipality in respect of which the application is made, subsection (1) does not apply and the Minister may

(a) enter into the development agreement;

(b) issue a building permit in respect of the major retail development.

Denial of building permit

38. Where a building permit in respect of a major retail development is denied, the council shall send a notice in writing to that effect to the developer.

Appeal to Commission

39. (1) Any person aggrieved by the decision of a council to issue or deny a building permit in respect of a major retail development or the decision of the Minister to grant or refuse approval therefor, may appeal the decision to the Commission by notice to the Commission, the council, the Minister and the developer within thirty days of the issue or denial of the building permit and if no notice is given within that time that decision is final.

Notice

(2) Where a building permit is issued in respect of a major retail development, the council shall cause notice thereof to be given in the Gazette and in a daily newspaper circulating in the municipality.

Commencement

(3) Where a building permit is issued in respect of a major retail development, the developer shall not commence and if he has commenced shall stop building operations, including site preparation, until

(a) the period for appeal to the Commission has expired; or

(b) if an appeal is filed, the Commission has made an order evidencing its disposition of the appeal.

Failure to comply

(4) Failure to comply with subsection (3) may be restrained by injunction on application to the Supreme Court.

Delivery of relevant documents

(5) Within ten days after receipt of notice of appeal by the parties named in subsection (1), the council and the Minister shall deliver to the Commission such number of copies as the Commission may reasonably require of all the relevant documents upon which the decision of the council or, as the case may be, of the Minister was founded.

Commencement of hearing

(6) The Commission, within thirty days after receipt of the documents referred to in subsection (5), shall commence a hearing into the issue.

Powers

(7) The Commission may

(a) examine all the relevant documents upon which the decision of the Minister or the council was founded;

(b) determine all matters of procedure;

(c) examine witnesses on oath;

(d) require the developer or the appellant to provide further studies in order to enable it to evaluate the impact of the development;

(e) require the appellant to give security for the costs of the appeal.

Order

(8) The Commission shall, within thirty days after hearing the evidence and receiving any argument, hear the issue and make an order evidencing its disposition of the appeal.

Permitted incremental expansion of retail space

40. (1) The retail space in any building may be increased by incremental expansion resulting in up to 2000 square metres of new or additional retail space, using the retail space employed at May 2, 1981 as the base for that calculation.

Subsequent expansion to be phased

(2) Subject to subsection (5), any development involving expansion of retail space over and above that permitted by subsection (1) shall be phased in accordance with the restrictions set out in subsection (3).

Restrictions on phased expansion

(3) Not more than 2000 square metres or 15 per cent of the existing retail space, whichever is less, shall be added by incremental expansion in any subsequent period of five years.

Determination of five year periods

(4) The periods of five years referred to in subsection (3) shall be calculated from the date of application for a building permit which, if granted, would result in the limit set out in subsection (1) being exceeded.

Developments deemed to be major retail development

(5) A development located within the boundaries of a municipality involving expansion of retail space over and above that permitted by subsection (3) may be permitted but shall be deemed to be a major retail development and the procedure set out in the preceding provisions of this Part shall apply thereto.

Application of section

(6) This section applies to any building in the province whether or not located within the boundaries of a municipality.

Saving for existing laws

41. The provisions of this Part and the requirements imposed respecting major retail development are in addition to and not in derogation of the regulations or any bylaws in force in a municipality respecting development.

Definitions

42. (1) In this section

application

(a) "application" means an application for a building permit made before May 2, 1981 in respect of a development;

development

(b) "development" means a major retail development as defined in this Part.

Part does not apply where building permit issued and in force

(2) This Part does not apply to a development in respect of which a building permit has been issued and was in force on May 2, 1981.

Application to existing applications notwithstanding vested rights or current litigation

(3) Notwithstanding subsection (2), this Part applies to any application if no building permit has been issued pursuant thereto which was in force on May 2, 1981, notwithstanding that

(a) a court of competent jurisdiction has directly or by inference found or held by declaration, judgment, order or otherwise, either before or after May 2, 1981, that the applicant has a vested right to such a building permit; or

(b) the application is or has been the subject of litigation on or before May 2, 1981.

Termination

43. This Part and subsection 29(5) cease to have effect on January 1, 1991 and shall be deemed to be repealed on that date.

PART VIII
GENERAL

Transitional

44. The Lieutenant Governor in Council may make regulations for the effective transition from the administration of the Planning Act R.S.P.E.I. 1974, Cap. P-6 to this Act and the regulations may include provisions for the lapse of existing municipal bylaws unless an official plan is adopted by the municipality within such period as may be prescribed.

Repeal

45. The Planning Act R.S.P.E.I. 1974, Cap. P-6 is repealed.

Agreements re land identification program void

46. Agreements made under the land identification program established under the Planning Act R.S.P.E.I. 1974, Cap. P-6 cease to have effect and are deemed to be null and void on the date this Act comes into force.

Commencement

47. This Act comes into force on such date as may be fixed by proclamation of the Lieutenant Governor in Council.